

REMARKS

Claims 1-8 and 8-17 are pending in the application, and claims 1, 6 and 16 are amended herein. Claim 9 has been cancelled.

Favorable reconsideration of the application is respectfully requested in view of the amendments and following comments.

I. CLAIM REJECTION – 35 U.S.C. § 112, second paragraph

Claims 1-17 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner contends that the recitation “does not substantially contain gluten” renders claims 1 and 16 indefinite.

Applicant has amended claims 1 and 16 to recite that the amount of active gluten is 5 weight percent or less, based on the total weight of the dough. Support for the amendment is found in the specification at page 25, lines 26 to 29. In view of the amendment to claims 1 and 16, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. §112.

II. CLAIM REJECTIONS - 35 U.S.C. § 102

Claims 1-4, 7-8, 10 and 13-17 have been rejected under 35 U.S.C. §102(b) as being anticipated by Hosokawa (JP 2001-275552). Applicant respectfully requests withdrawal of the rejection for at least the following reasons.

Claims 1 and 16 have been amended to recite that the non-gelatinized flour comprises a roasted wheat flour. Support for the amendment is found in the specification at page 8, lines 11-12, and page 13, lines 15-22. As acknowledged by the Examiner, Hosokawa does not disclose a baked snack containing roasted wheat flour. Because Hosokawa fails to disclose the claimed baked snack containing roasted wheat flour and method of making the baked snack, Applicant respectfully submits that the rejection of claims 1-4, 7-8, 10 and 13-17 under 35 U.S.C. §102 should be withdrawn.

III. CLAIM REJECTIONS – 35 U.S.C. §103

Claims 11 and 12 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hosokawa. The Examiner acknowledges that Hosokawa fails to

explicitly disclose a baked snack with 10-30 parts by weight of taste providing material with respect to the 100 parts by weight of non-gelatinized flour and the gelatinized flour. Nevertheless, it is the Examiner's position that one of ordinary skill in the art would have optimized the amount of taste providing material in the dough composition of Hosokawa to obtain the desired flavor character and intensity in the baked snack.

Applicant respectfully disagrees with the Examiner's contention. As discussed above, Hosokawa fails to disclose or suggest the use of roasted wheat flour. A partial translation of Hosokawa (JP 2001-275552) is provided in attached Exhibit 1. Hosokawa describes in paragraph 0026 that "[I]t is noted that when using wheat flour, it is preferable to use a weak wheat flour in the ratio of 50% or less from a viewpoint of the hardness of dough and the strength of gluten. More preferably, the formulation ratio of strong wheat flour: weak wheat flour is 80:20 - 50:50". The Examples of Hosokawa use wheat flour as cereal flour. These disclosures mean that the dough described in Hosokawa should contain large amounts of gluten. In this regard, roasted wheat flour and corn flour contain no active gluten. Therefore, one skilled in the art would not have been motivated to use roasted wheat flour or corn flour as cereal flour.

Furthermore, Hosokawa forms the dough using the viscoelasticity of gluten. Roasted wheat flour contains no active gluten and does not produce viscoelasticity. If the amount of gluten-free roasted wheat flour is increased, the viscoelasticity of the dough would be decreased, and it would be difficult to form the dough into a hollow stick shape. If the formed shape is not uniform, the shaped dough is baked non-uniformly, resulting in poor taste. Thus, Hosokawa does not intend to use roasted wheat flour instead of normal wheat flour. Additionally, roasted wheat flour is more expensive than normal wheat flour, and there is no advantage in using such expensive roasted wheat flour instead of normal wheat flour in the pretzels in Hosokawa. Thus, those skilled in the art would not use roasted wheat flour instead of normal wheat flour in the pretzels of Hosokawa.

If roasted wheat flour were used in Hosokawa's pretzels and methods, it would be difficult to form the dough into a hollow stick shape. Specifically, since roasted wheat flour contains no active gluten, if it is used as cereal flour, the viscoelasticity of the mixed dough is decreased, and it will be difficult to maintain a hollow stick shape

and elongation after shaping. Furthermore, cutting problems and opening of some holes in the shaped dough will easily occur. This is especially the case when the hollow stick shaped baked snack is thin and a filling material such as chocolate is filled in the hollow baked snack. It would be difficult to use roasted wheat flour as cereal flour from the viewpoint of the accuracy of forming the dough into a stick shape and the strength of the baked snack. It would not have been obvious to use roasted wheat flour in the pretzel of Hosokawa. Accordingly, Applicant respectfully request withdrawal of the rejection of claims 11 and 12 under 35 U.S.C. §103(a) based on Hosokawa.

Claims 5-6 and 9 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hosokawa in view of Hiroko (JP 09-149757). The Examiner acknowledges that Hosokawa fails to explicitly disclose that the non-gelatinized flour is derived from roasted wheat flour. Nevertheless, the Examiner contends that it would have been obvious to have used roasted wheat flour, as taught by Hiroko, for the purpose of making a product with good solubility in the mouth and crispy texture.

Applicant respectfully disagrees with the Examiner's contention. As discussed above with regard to Hosokawa, Hosokawa discloses that the dough should contain large amounts of gluten. Hosokawa does not suggest using roasted wheat flour instead of normal wheat flour. Hiroko provides no motivation to substitute the normal wheat flour of Hosokawa with roasted wheat flour.

A partial translation of Hiroko (JP 09-149757) is provided in attached Exhibit 2. Specifically, a translation of Tables 1 and 2 of Hiroko is provided. From Tables 1 and 2, it can be understood that the higher the amount of roasted wheat flour used in the formulation, the lower the elasticity of the mixed dough. When 100 % roasted wheat flour was used, the mixed dough became crumbled. Those skilled in the art would understand that if roasted wheat flour is used as the non-gelatinized flour, forming the dough into a hollow stick shape would result in failure. Thus, one skilled in the art would not have been motivated to modify the dough of Hosokawa to include roasted wheat flour as the non-gelatinized flour of Hosokawa based on the teachings of Hiroko.

Furthermore, Hiroko does not describe forming dough into a hollow stick shape. In this regard, biscuits are classified into 2 categories: hard biscuits, which use the

viscoelasticity of gluten, and soft biscuits, in which the elasticity of gluten is suppressed as low as possible. Hiroko discloses that the shaping property is improved by suppressing elasticity, while preventing taste deterioration due to the replacement of starch (which contains no gluten) for wheat flour. Therefore, Hiroko is directed to a soft biscuit. If the dough is not elastic, it is difficult to form the dough into a hollow stick shape and to bake it while maintaining the formed hollow stick shape.

The hollow baked snack of the present invention is produced using the elasticity of gelatinized flour instead of the viscoelasticity of gluten. In the case of dough using the elasticity of gelatinized flour, if active gluten-containing wheat flour is used, clumping together of mixed dough would worsen, and the release of water by baking would greatly worsen. Thus, production of a hollow baked snack would become difficult. This may be due to the fact that both gelatinized flour (e.g., gelatinized starches) and glutens tend to absorb water. On the other hand, roasted wheat flour has the taste of wheat flour, wherein all active gluten has been lost, and thus, even if it is used with gelatinized flour, the gathering of dough and water evaporation will be quite good. This is a significant advantage for production of the hollow baked snack of the present invention.

In view of Hiroko, it is expected that if roasted wheat flour is used instead of normal wheat flour, it would be difficult to form the dough into a hollow stick shape. It would result in non-uniform shaped dough, non-uniform baking, and worse taste. However, contrary to the above expectation, dough of the present invention can be easily formed into a hollow stick shape. Furthermore, it is unexpected from the teaching of Hiroko that the baked snack having a hollow shape of the present invention has a light and crispy texture, easily melted in the mouth, and is not powdery and dry at all. Thus, the baked snack of the present invention is not obvious over Hosokawa in view of Hiroko. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 5-6 and 9 under 35 U.S.C. §103(a).

Claims 1-2, 5 and 7-8 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Michiko et al. (JP 11-276058). The Examiner acknowledges that Michiko does not explicitly disclose a baked snack having a hollow stick shape. Nevertheless, the Examiner contends that a change in size and shape does not render

the claimed invention patentably distinct over the prior art absent persuasive evidence that the particular configuration of the claimed invention is significant.

Applicant respectfully disagrees with the Examiner's contention. Michiko et al. describes a method for producing a wheat flour processed food including a baked snack such as a biscuit (for example, biscuit and wafer) and cake, by using non-gelatinized gluten-free wheat flour and gelatinized gluten-free flour. Michiko et al. discloses that gluten-free wheat flour is used and that a part of or all of the wheat flour is gelatinized. Michiko et al. do not describe forming dough of a biscuit, cake and the like into a hollow stick shape. On the other hand, the baked snack of the present invention solves the problems that are unique for a hollow stick shape.

According to the method of Michiko et al., when a part or all of the gluten-free wheat flour is gelatinized, the gelatinized part becomes a film, and thereby more voids are retained, resulting in the achievement of satisfactory expansion. If dough having such a formed film therein is formed into a hollow stick shape and thereafter baked, the release of moisture due to heat is interfered with and thereby it is necessary to take a long period of time for baking. Furthermore, the obtained snack has a large blister and lacks a satisfactory even texture.

Furthermore, Michiko et al. do not disclose roasted wheat flour. Michiko et al. discloses a method for forming dough using gluten-free wheat flour and increasing the viscoelasticity by heating. Gluten is a very important ingredient for giving wheat taste. Gluten-free wheat gives poor wheat taste, although roasted wheat flour gives good wheat taste. Gelatinization is performed by heating after water is added. However, roasted flour is produced by heating without adding water. Gelatinization, which is described in Michiko et al., will produce gelatinized flour which corresponds to the gelatinized flour of the present invention.

Forming a hollow stick requires tight control of the physical properties of the mixed dough. If the heat gelatinization of Michiko et al. is used, control of the degree of gelatinization is difficult. Thus, the industrial production of hollow baked snack would be impossible. Specifically, gelatinization requires water and heat. Great care should be taken in mixing for hydration, the heating time period for gelatinization, temperature rising speed and stirring for preventing browning upon heating. Browning will damage

the taste of the product. If gelatinization is insufficient, viscoelasticity will be insufficient, shaping is worsened, and the taste of the baked snack will be powdery. If gelatinization is excessive, production efficiency will decrease due to pressure at shaping, and maintenance of the hollow shape will be difficult because of blister formation after baking. In addition, the production efficiency will decrease by worsening of the evaporation of water. Based on the teachings of Michiko et al., the baked snack of claims 1-2, 5 and 7-8 would not have been obvious. Accordingly, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. §103(a).

IV. CONCLUSION

For at least the foregoing reasons, claims 1-8 and 10-17 are believed to be allowable and the application is believed to be in condition for allowance. A prompt action to such end is earnestly solicited.

Should the Examiner feel that a telephone interview would be helpful to facilitate favorable prosecution of the above-identified application, the Examiner is invited to contact the undersigned at the telephone number provided below.

Should a petition for an extension of time be necessary for the timely reply to the outstanding Office Action (or if such a petition has been made and an additional extension is necessary), petition is hereby made and the Commissioner is authorized to charge any fees (including additional claim fees) to Deposit Account No. 18-0988, reference number YAMAP0998US.

Respectfully submitted,

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Exhibit 1
Partial Translation of Hosokawa (JP 2001-275552)

[0026]

(Cereal flours) Cereal flours used in the present invention can be cereal flours which are conventionally known as the main raw material of pretzel. Specifically, for example, wheat flour, barley flour, rye flour, oat flour, corn flour or the like can be used. Wheat flour is preferable. It is noted that when using wheat flour, it is preferable to use weak wheat flour in the ratio of 50% or less from a viewpoint of the hardness of dough and the strength of gluten. More preferably, the formulation ratio of strong wheat flour: weak wheat flour is 80:20 - 50:50.

Exhibit 2
Partial Translation of Hiroko (JP 09-149757)

[0016]

[Table 1]

	Comparative Example	Formulation 1	Formulation 2	Formulation 3	Formulation 4
Wheat flour	175	140	--	140	--
Roasted wheat flour	---	35	175	--	--
Corn starch	--	--	--	35	175
Butter	90	90	90	90	90
Granulated sugar	10	10	10	10	10
Powdered sugar	40	40	40	40	40
Common Salt	1	1	1	1	1
Water	0	0	0	0	15

[0017]

[Table 2]

	Comparative Example	Formulation 1	Formulation 2
Properties after mixing	soft filtered bean paste-like, having elasticity	filtered bean paste-like, having no elasticity	crumbled
ease of applying to rotary molder	release from mold is slightly worse, and dough has elasticity	good release from mold	release from mold is very well and no elasticity is occurred for dough
mouthfeel	hard and bad mouthfeel	slightly hard, bad mouthfeel	soft, good mouthfeel